PHILIPPINE PAPERS 1

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Liberty and government in the New Society

LIBERTY AND GOVERNMENT IN THE NEW SOCIETY

by O.D. Corpuz

THE PERSPECTIVES of the intellect have a way, and the power, of sometimes fixing the boundaries of unfolding reality. President Ferdinand E. Marcos' historic martial-law proclamation is rooted in the vision of a new Filipino society that formed and developed in his mind sometime in 1971; this perspective and vision dominate the shape of our national life today.

Because we have a vision of tomorrow, we are able to order and direct our affairs today. It is probably true that the essence of the future is contained in the constraints of the present. It must be equally true, at least in part, that the reality of the present is shaped by our perspective of the future.

1. In the foreword to his new book *Notes on the New Society of the Philippines*, the President writes that declaring martial law was not the most difficult decision he had to make. Martial law alone would have been something of a cruel trick, a restoration of "normalcy" followed by an easy drifting back to the old life of our old society. He describes the old status quo as "the sick society of privilege and irresponsibility whose excesses and inequities spawned the unrest and the violence that threatened the political order, ... a society which, in its injustice and unresponsiveness to the needs of the greater number, had lost the right to exist. It was, moreover, a society that was the perfect target for dissident agitation and activity, a society that was the fertile ground for revolutionary enterprise."

It was obvious to the President that a leader does not take a great step in order to return to where he was before, to declare martial law in order to restore a sick society. The greater decision was therefore to move forward: "A much more enormous responsibility, one that could not be shirked, was . . . the transformation, no less, of Philippine society." And so the President perceives in what is now widely known as martial law, Philippine style, a "unique character: from the untenable strategy of protecting or restoring the status quo to a militant, Constitutional, and legal strategy for creating and building, from the ashes of the old, a new society."

I make one more quotation from the President's foreword. He states that "martial law necessarily creates a command society. But a new society cannot emerge out of sheer command alone."

2. Thoughtful and concerned Filipinos have a duty to contribute to these Presidential perspectives. The quality of our national life, and the shape of the prospects ahead of us—they will be no more and no less than the aggregate of the ideals and aspirations that we put into and withhold from the national perspective. The creating and building of a new society, like all historic enterprises, gains from leadership, but it is not one man's adventure. It is, or ought to be, a covenant among us all to achieve the fullness of what is achievable through the contribution of all that is good in us.

But we cannot create, much less sustain, new societies on the basis of the intellectual design of old ones. The reason for this is that the intellectual perspective of a new society that is established precisely to replace an old social order is often accompanied by either a radical overhauling or an outright rejection of the old perspective. For the same reason, all meaningful reservations or resistance to a new

society essentially derive from questions addressed to its intellectual vision. These questions tend to be based on the conceptual vocabulary of the old order that has been replaced.

TODAY, the problem of the Filipino intellectual in the New Society is the problem of choosing between the sociopolitical concepts of the old and those of the new social order. President Marcos' declaration of martial law and his call for all of us to join in the building of a new Filipino society strike at some of the most fundamental concepts in our political education. These concepts are shared by most schooled Filipinos even today, established in their minds by our formal and informal education in politics. They are part of our conceptual vocabulary, and therefore determine our intellectual attitude to the vision of the New Society.

3. I refer to liberty, freedom, and rights. This paper traces the origins of these basic concepts that normally determine the intellectual's view of civics and politics, and presents new meanings that have emerged in a historical context and as a result of the moral and ethical growth of mankind. My argument is that most Filipinos who speak of liberty are unaware of its historical origins, are unaware that the meaning which most of us attach to the word springs from a specific Anglo-Saxon tradition. I will show that the insistent adherence to this particular tradition imprisons us in a seventeenth-century English perspective, that of British Whiggism. I will leave it to the reader to judge whether or not this concept of liberty and freedom and rights is valid as a guide to political wisdom and civic ethics, as a measure of welfare, and as a standard of the legitimacy of modern government.

4. The Filipinos' first direct contact with the great modern ideas in political thought goes

no further back than the late nineteenth century. The Spanish colonial regime in the Philippines was not, of course, an unrelieved absolutism. The great Napoleonic victories spread French political ideas over much of Europe, and a Constitutional monarchy was temporarily installed in Spain. The Spanish Constitution of 1812 was extended to the Philippines, and the colony was allowed representation in the Spanish Cortes, or parliament. The English writer Henry Piddington (visiting Manila 1819-1822) reported that the ideas of Voltaire, Paine, and Rousseau were circulating clandestinely in Manila. But of course the secret dissenters, and the representatives to the Cortes, were Spaniards. It was not until Rizal, Marcelo H. del Pilar, and a few other Filipinos sojourned in Europe during the period before the Philippine Revolution that we first came to know of the great concepts of national self-determination, popular sovereignty, republicanism and Constitutional government, representative democracy, liberty, and political rights. These ideas were ascendant during that period of European Enlightenment. They were exhilarating alternatives to the repressiveness of Spanish colonialism, and the Philippine Revolution ultimately established them in the Malolos Constitution. Enlightenment in Spanish is "*la ilustracion*," and so the first Filipino political intellectuals are called "*ilustrados*."

These ideas were not exclusively European, but what is noteworthy is that the *ilustrados* came to know them in their European form. Unfortunately, this link to European political thought was largely cut off by American colonization, and very few Filipinos today know the Malolos Constitution, an *ilustrado* document and the first republican constitution in Southeast Asia.

5. Modern political ideas came to the ordinary schooled Filipino in American dress. The Americans set up an efficient mass-based school

system and a modern government based on similar American institutions. The English-language school system naturally necessitated the use of American books, and so Filipinos grew up learning their civics from school readers and primers detailing lessons from the lives and ideas of Washington, Lincoln, Jefferson, Franklin, and other American notables. Education from schooling was reinforced by political experience, for the intellectual underpinnings and formal shape of the new governmental institutions were derived from American political tradition.

The Filipino understanding of concepts such as liberty and freedom and rights therefore is an understanding of these concepts in their American meanings. A brief review of the nature and origin of our bill of rights is instructive.

Our 1972 bill of rights is almost entirely lifted from our 1935 Constitution. The 1935 bill of rights is largely a reproduction of the draft submitted by the bill of rights committee in the 1934-1935 Constitutional convention. This draft, in turn, was a virtual restatement of provisions on rights in the organic law of 1916, otherwise known as the Jones Law. When delegate Jose P. Laurel, bill of rights committee chairman, submitted his draft to the convention, he assured his fellow delegates that "the enumeration of rights in the present organic law is considered ample, comprehensive and precise enough to safeguard the rights and immunities of Filipino citizens against abuses or encroachments of the Government, its powers, or agents." What was the organic law of 1916? It was a statute enacted by the US Congress, so that its provisions on rights were quite understandably simple liftings from the provisions in the US Constitution, and adoptions of similar ideas in US political thought.

Thus it is that conventional ideas in the educated Filipino's perspective on civics, and the dominant principles of our political vocab-

ulary, developed from the American tradition. These ideas have not merely become part of our informal political conversation, they have been embedded in our formal case law. The leading decisions of the Philippine Supreme Court on liberty and freedom and rights would be meaningless without the principles and precedents richly cited from American jurisprudence.

6. But the American tradition is the channel, rather than the source, of our conventional political concepts. We will next trace, briefly, the source of this tradition.

Thomas Jefferson is recognized as the author of the American Declaration of Independence; he likewise played a conspicuous role in the framing of the US Constitution. Many Filipinos will still be able to recite Jefferson's ringing words in that historic document: "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain inalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness." But if Jefferson had the gift of eloquence and drama, the basic political ideas in the Declaration were in fact a paraphrasing of the political ideas of the seventeenth-century English philosopher John Locke.

HE WILL NOT discuss all of Locke's political ideas, much less his nonpolitical writings. His great political works were the two Treatises on civil government, first published anonymously in 1690. The first *Treatise* was an unnecessarily serious attack on the theory of the divine right of kings, under which it was argued that kings were "God's lieutenants on earth," and that their authority emanates directly from God's will, that royal authority is absolute, and therefore not subject to human challenge or question. This theory had already lost most of the power it possessed in more credulous epochs, but in any event King James II was de-

posed in the successful, in British history the "glorious," revolution of 1688. James's foes then scouted around for a likely successor, and finally installed William III (jointly with his wife Mary) on the condition that he forswear any claim to divine right, and instead accept the principle that his authority emanated from and was subject to the consent of the people. Locke wrote his second *Treatise* as a defense and a justification of the revolution of 1688 and its political principles.

The logic of Locke's argument was simple. We will dispense with his resort to the then fashionable fiction of the state of nature. He believed that the welfare of the people was threatened by the claim to absolute authority by a pretentious hereditary monarchy. Locke was a supporter of monarchy, provided that the monarch was rendered incapable of employing the powers of government to destroy or invade the lives, liberties, and properties of citizens. His solution was to impose upon the monarch a set of conditions governing political authority; these conditions in practice would constitute a system of limitations or prohibitions upon the powers and authority of the monarch and his government. Locke was logical, and indeed he was one of the leading lights of the Age of Reason in politics. If you limit governmental authority by restraints and prohibitions, you diminish the government's capacity to abuse, and to that extent you protect the life, liberty, and property of the citizens. The logical conclusion of this argument, of course, is that the people whose consent is the source of the authority of the government may fully ensure their security and welfare by giving no powers to government except such as are necessary to maintain the civic order. This is why Locke is often referred to as the advocate of the "umpire state," a political system wherein governmental authority extends only to the keeping and implementation of the criminal

laws. In modern dress, government becomes very much a basketball referee: it stands apart and does not play in the game, and intervenes only when a rule of the game is violated.

It was the turn of the Americans, in the latter eighteenth century, to feel oppressed by England. In particular, the Yankee leaders regarded themselves as Englishmen abroad, entitled to the rights of Englishmen and to the protection of the English government. Following Locke's theory of property and his doctrines of representation, they coined the slogan, shortly to become a rallying cry, "No taxation without representation." In the event, they solved their problem by revolution and established a new nation. From here on the script is Locke's.

Jefferson's Declaration is an appeal "to the decent opinions of mankind," and a justification of the revolution of 1688. Locke had been the chief author of *The Fundamental Institutions of Carolina*, and now he was a major influence in the making of the US Constitution. The Americans were determined to prevent abuse and oppression by government, including that which they were now to create, and they devised a set of restraints and prohibitions in the Constitution, embodying almost all of the principles of Locke. The system of restraints is a bill, or list, of rights. Thus the US bill of rights—the first ten amendments plus a few limitations in the main Constitution—is a list of restrictions or prohibitions on the American government. It is prohibited from enacting *ex post facto* laws, from imposing excessive fines, from placing a man twice in jeopardy of losing his rights for the same offense, etc. Locke's notion of rights as a defense of the life, liberty, and property of citizens against government, and his notion of government as an umpire or constable, are further echoed in the Jeffersonian aphorism that "the best government is that which governs least."

How enduring and lasting this Lockeian tradition had become in America was shown in a television speech in August 1973 of the American President. Beset by the ordeal of the Watergate scandal, Mr. Nixon was faced with the problem of recovering the credibility he had lost. How to do this? With the counsel of his most trusted and competent advisers, he offered to his audience a definition of the mandate he said he received from the American people. Obviously the formulation and substance of this definition must embody and convey what Mr. Nixon believed to be the most powerful appeals to the American mind. Part of this mandate, he said, is "to reduce the power and size of Government."

It is this Anglo-Saxon tradition that is the source of the dominant notions of liberty and government that are part of the Filipino intellectual's political perspective. They are firmly fixed and deeply embedded in our Constitutional system.

7. It is tempting to speculate on alternative traditions that might have developed in our intellectual perspectives had we, for instance, achieved and retained our national independence in 1898. Our school system and our political system would have been different. Equally important, the language in which we express our ideas and aspirations, which is also the medium through which we gain access to and understanding of the great traditions in the human intellectual experience, might now be different. English, instead of being the principal language with which we learn the great ideas of mankind, might have been only one of any number of equally important languages, including our own. As it is, the overwhelming majority of schooled Filipinos reach and read foreign literature in English, and this language has fatefully conveyed and established in our national life in Anglo-Saxon tradition surviving from the seventeenth and eighteenth centuries.

The conspicuous endurance and power of this tradition in the Philippines are easily shown. Our Constitution repeats, virtually verbatim, one of the limitations imposed in the English revolution of 1688 upon William II: "Excessive bail ought not to be required, nor excessive fines be imposed, nor cruel and unusual punishments be inflicted." It is a sure bet that William II could never have imagined that this condition imposed upon him by Englishmen to protect Englishmen's rights almost three centuries ago would be adopted in convention by English-speaking members of a nation of the brown race in Asia. These and other precepts of the Anglo-Saxon tradition are established in Philippine courts today as parts of the rights of accused Filipinos and as part of the fundamentals of justice. When the late Laurel presented his draft bill of rights, largely lifted from an American statute, to the Philippine Constitutional convention of 1934-1935, he justified it as an adequate safeguard of Filipino citizens against abuses by their government. This again is a faithful restatement of the Locke-Jefferson tradition.

Even today, many schooled Filipinos cannot conceive of liberty except as the proposition that liberty exists only when governmental authority is curbed or limited. John Locke is certainly the intellectual inspiration of the members of the Civil Liberties Union of the Philippines, whether they are aware of him or not, as he is of the American Civil Liberties Union, both of which regard the bill of rights as the principal, if not the sole, definition of liberty. The civil liberties tradition, in particular, tends to believe that there can be no true liberty except with the broadest possible Constitutional and statutory guarantees of the rights of free expression and political dissent.

8. If we are to create a new society based on a vision of the future, we are bound by our duty to that vision to review and reasses the old concepts that our vision seeks to replace, in or-

der that we not discard sound principles and adopt others of inferior validity.

Let us therefore re-examine the notion of liberty, a fundamental concept in our political education, and assess it in the light of our efforts and aspirations as a nation, to broaden the enjoyment of justice, to enhance our people's welfare, and to secure our future in the New Society.

LET US DISPOSE of one problem immediately. Locke's view of liberty is political liberty, that is, a view that regards liberty only as the relations between citizens and the government. This view, so crucial to Locke, secures the welfare of Englishmen against abuses emanating from the monarchy or government. As such, it is a priceless human tradition to which we may properly assent, although it by no means commands universal agreement, especially outside the political perspectives of the Western world. It is simply the basic tradition underlying modern Constitutional government, which is precisely what is meant by limited government. It is still perhaps the most civilized arrangement ever devised against capricious and arbitrary abuse of political power, so that the imposition of Constitutional restraint on government has been adopted by most civilized nations.

But the political liberty that is persuasively justified by Locke conceals a dangerous trap. This is clearly shown by a brief review of its historico-sociological context. It is 1690, and when Locke writes of the people, he by no means refers to the people in our sense. When he writes of the relations between the government and the citizens, he was referring to the monarchy on the one hand, and the English aristocracy and upper classes on the other. To Locke it was the life, liberty, and property of the privileged classes of English society, not of all Englishmen, that were endangered by the monarchy and its government. The proof of this is that the Constitutional political system

that Locke justified included only a small portion of English society. Locke saw no problem in the fact that the *middle classes* were not yet enfranchised in 1690; it was only in 1832 that English parliamentary reform extended the suffrage to them. The 1867 reform law still excluded English farm workers from the vote. And Englishwomen did not qualify for suffrage until 1918, when electoral reform finally enfranchised them, provided they were at least thirty years old. That the government should represent the people, that the people are sovereign, and that the consent of the governed is the basis of governmental power—all critical elements in Locke's political principles—have meaning in Locke's political thought only because he equated the privileged classes to the people.

It was the same thing, for a long time, in America. The founding fathers proclaimed their conviction that God created all men equal. They pledge that no man be denied the equal protection of the laws, but many of them, including Jefferson and Washington, were slave-owners. Slavery continued to be an American institution until the end of the Civil War, protected by the doctrine of political liberty, if inconsistent with the idea of human equality. US blacks remained less-than-equal under the separate-and-equal principle until the historic 1954 decision of the US Supreme Court.

In short, the intellectuals of the Anglo-Saxon tradition during the seventeenth and eighteenth centuries were thinking of the liberty and welfare of the privileged classes, not the liberty and welfare of the people; they were protecting the liberty of the few against the powers of the government. There is no more powerful or respectable justification in Western political thought of the oligarchic domination of society than the doctrine of political liberty.

The elitist bias in Locke's "life, liberty, and property" (1690) and in the American founding fathers' "life, liberty, and the pursuit

of happiness" (1776) likewise becomes evident once we read these formulations alongside of the French Declaration of the Rights of Man concept of "liberty, equality, fraternity" (1789). The Anglo-Saxon claim to liberty is a special claim, made in behalf of the privileged classes. The French claim to liberty is a general claim to a right inhering in all of mankind, and therefore in every man by virtue of humanity alone, uncontaminated by any consideration of estate, race, or other condition created in society. This is why political liberty alone is not enough. Republican government, popular sovereignty, consent of the governed, and democracy have no meaning when political liberty is the possession of the few, and not vouch-safed for all. Liberty, indeed, is debased by those who claim it for themselves without claiming it for all of their countrymen, for then they claim it as a prerogative of birth, or race, or religion, or some other special circumstance, instead of as a universal human right. And this is why no national society can be truly free, unless there is equality in the enjoyment and possession of liberty.

Moreover, the view of liberty which regards government as an actual or potential threat to the citizens, and therefore prescribes restraints or prohibitions on government as the answer to that threat, ought not to be pushed to its logical conclusion. The proposition should not be stretched to mean, for instance, that the welfare of citizens is secured only by keeping the government weak. This form of the proposition, paradoxically, undercuts its own force in two important respects. In the first place, the maximum of political liberty in this sense will always be less than the amount of liberty needed for the fulfillment and dignity of persons, either as individual human beings or as citizens in a national society. I will demonstrate this later. In the second place, it is not operationally sound. President Marcos has said, simply and I think validly, that the first duty of government is to govern, and if it is to govern it must govern well, for a government that

cannot govern well has no claim to either the physical obedience or the moral allegiance of the people. Worse, a government that is weak and cannot govern well is itself a threat to welfare, for such a government certainly cannot redress wrongs, and therefore cannot promote rights.

LOCKE'S PREOCCUPATION with political liberty is quite natural, given the circumstances of the revolution of 1688. It is also quite understandable, given his lack of sociological sensitivity. Quite apart from these, an undue focus on political liberty often tends to confer undue importance upon the method for ensuring it—that is, on the bill of rights. Discussions on the bill of rights, especially judicial decisions, lawyers' briefs, and high-school compositions tend to be couched in noble and outspoken language, because the enumeration of rights never fails to suffuse the reader with a reassuring sense of importance and potency. The bill of rights, when read at face value, is a symbolic mantle of protection available to the humblest and the highest in society, against which the vast and awesome powers of government cannot prevail. From here arises the view that the bill of rights is the primary, if not the exclusive, source and guarantee of our liberty, security, and welfare.

Such a view is erroneous. Operationally a bill of rights is simply a list of two things. It is a list, first, of prohibitions on the government; second, it is a list of the rights of accused persons. Thus it serves the interests of two classes of people in society. It protects the relatively few who are accused, and incidentally gives hope to those who intend to break the law. Second, it benefits those classes whose interests are threatened by positive governmental action, those classes whose status and comfort are maintained by governmental nonintervention in their lives. The overwhelming majority of citizens, who may safely be presumed to be law-abiding, do not in fact derive any benefits from the rights guaranteed to those who are charged and

accused in the courts. Nor does the bill of rights offer solace and hope to those citizens whose only prospects for uplift and betterment depend upon positive action by the government.

It is fortunate that the bill of rights is only one article in our Constitution. There are other provisions, which impose responsibilities and confer authority on government to the end that it ensure our security and promote the common welfare.

There are citizens in the national society whose estate and resources preclude their need for governmental action, except such action as might be required to preserve their estate and comfort from other persons. But there are also other citizens, comprising the larger number of our people, who are daily beset by the afflictions of poverty, ill health, and lack of opportunity. These citizens, with humble resources and dreary futures, understandably place their expectations on the government, believing that it ought to be obligated, rather than forbidden, to act in their behalf, to ameliorate their lot, and emancipate them from misfortune. It is these citizens for whom government must act, must intervene beyond keeping the law, in order that our national community become more of a community.

The bill of rights therefore promises to the larger number of citizens a political liberty that is far removed from their lives, while the other provisions of the Constitution require and authorize the government to associate itself with the people's lives, to become their partner in the search for a better quality of human life. Thus it is not the bill of rights alone, but the whole and entire Constitution, on the one hand restraining the government from abuse, and on the other investing it with the power and the duty to intervene in our lives, that is the definition of our political liberty and the statement of that potential of human liberty and well-being that we can aspire to attain.

THE BILL OF RIGHTS tradition, which assigns so much importance to the mode and the means of safeguarding liberty, has led to a conventional formula in Constitution making. Modern democratic Constitution begin with a preamble stating the national aspirations. Then follows, oftentimes, a declaration of principles of society or politics and government. Then the bill of rights, stipulating the limitations and prohibitions on government. The rest of the Constitution follows, designing the government and the duties, powers, and functions of its various parts. Such a procedure, with the central importance accorded to the system of restraints on government, was natural to the old aristocracies, and to modern oligarchies representing substance and social station, whose natural and principal interest lies in protecting their estate and status. The procedure, in short, is to specify the restraints on government, and then to design the government.

This conventional formula, a legacy from the political thought of our colonial experience, is open to question. It may be doubted whether it is proper for the developing societies of the late twentieth century. Constitutions are for people, and when we say people, our enlarged morality since the seventeenth century enables us to mean all, not some of the people. A democratic Constitution recognizes the differences that exist among human persons, that is to say, it respects the special claims of talent, energy, and creative imagination. There is no inconsistency between democracy and the according of special rewards to citizens of special virtue and achievement, whether the reward takes the form of extra allocations of the finest mandarin tea, or a summer villa by the shores of the Crimea, or generous expense allowances. But it is the duty of democratic government to redress radical imbalances in the distribution of values among its citizens, either by redistributing wealth among them, or by providing special services and creating opportunities that enable the less fortunate

members of the community to rise nearer to the levels of ease and dignity attained by the others.

The formulation of a design of government that enables it to discharge this duty is more important than the design of limitations upon it. To the larger number of people in the community, it is more important that the nation declare its commitment to the promotion of human welfare, that the government be formally obligated to promote this common welfare, and that the government be authorized and adequately empowered to promote the well-being of all citizens beyond the capacity of factions and class interests to frustrate. Persons associate themselves with others into private organizations in order to pursue their private interests, but the citizens of a national society organize a government in order to promote actively the well-being of the entire community. Ensuring the realization of this purpose of government is more important than limiting its powers, for it is this purpose that motivates the people into associating as a political community. After the people have covenanted on this purpose, and after designing the government for its realization, they may specify the legitimate rights of dignity and privacy that governmental authority cannot invade.

TODAY, if only because almost three hundred years have passed since Locke's time, we have to look at liberty differently. The evolution of human societies, the changed relationships between men and the physical environment, and the growth of human morality have radically altered mankind's ideas on the proper scope and functions of government. We can no longer accept the Jeffersonian dictum that the best government is that which governs least. Such a view was undoubtedly appropriate to a society of propertied slave-owners, but once the blacks and the oppressed and the unfortunate are recognized as equal members of human society, an irreversible change in the scope and functions of government necessarily follows. We do not consider it

to be a diminution of human liberty if we insist, today, that government do more, instead of less, than in Jefferson's time. Today indeed we accept and demand that the government must collect garbage, breed swine and cattle, lend money, distribute seed, develop serums and vaccines, maintain hotels and resorts, distribute contraceptive pills and provide family-planning services, conduct college entrance examinations, and so on, in response to the requirements of development and welfare in modern life. These activities of government, commonplace in our time, were unimaginable during the seventeenth and eighteenth centuries, not because they are improper tasks for government but because our sense of a shared humanity and of the meaning of well-being have progressed far beyond the morality and values of those times. The increased authority that we invest upon government, and the new obligations we impose upon it, are not a diminution of human liberty but necessary consequences of our views of an increasingly human community life.

We may regard an undernourished and sickly child, an ignorant and unlettered farmer, or an unemployed widow who is the head of a family, in two ways. We may consider them free, and in the full enjoyment of liberty, because the government is effectively restrained from interfering in their lives. We shall ensure their liberty by denying to the government any power to oppress them. They shall express their thoughts freely, and publish and disseminate their dissent. They shall have every right to assemble peaceably and to form associations not contrary to law. The government shall forever be prohibited from entering their shanties and huts, and from searching and seizing their effects, except upon a proper warrant. No matter how poor they might be, they shall enjoy these rights measure for measure in exactly the same degree that these are enjoyed by the rich. In schooling, in housing, in recreation, in the exploitation of productive natural resources, in the financing of industry, they shall

not be denied by reason of poverty from freely competing with the richer classes of society. Should they turn to crime and be accused in court, we will give them counsel and speedy trial, seeing to it that the fines imposed be fair, or that the punishment inflicted be neither cruel nor unusual. This is political liberty.

Alternatively, we may regard them as wretched and unfree, utterly bereft of liberty, because in their plight and in the inability of government to assist in their uplift, they have no hope and relief, *they have no capability to attain the fullness of their potential as human beings.* This capability to attain the fullness of one's potential is an alternative view of the meaning of human liberty.

9. Human capability as human liberty is not a modern concept. But it reflects the modern man's intelligence and awareness of the economic, social, and techno-scientific revolutions that have profoundly and radically complicated man's environment, man's institutions, and man's perceptions of himself and of the world. This concept establishes man and his humanity as the heart and center of the meaning of liberty. Liberty is regarded not as an abstract idea, but as a necessary and attainable condition of life, as vital to men's and women's lives as any of their other physical, intellectual, and moral attributes.

This concept of human liberty recognizes, and opposes, repressive government as a diminution of human capability. But it goes far, far beyond this old idea, for it gives expression to our awareness that not all the threats to human welfare derive from governmental authority. Today we see what Locke and Jefferson, with their concern to curb and restrain government, could not see in their time; that malnutrition, ill health, ignorance and illiteracy, social inequity, unemployment, slum living, the ravaging of natural resources, and the pollution of the environment are threats to the well-being of mankind.

It takes courage to challenge the threat to one's liberty that comes from the awesome pow-

ers of government. Anybody can see that. We extol as heroes those who defend the dignity of the human person against authoritarianism. But the redeeming virtue of courage in this sense is denied to persons who endure despite a continuous assault upon their human dignity by socio-economic deprivation, and who retain the human spirit in their humble shelters despite the dehumanizing influence of uncontrolled technology. Conscience moves some of us to alleviate the lot of our unfortunate fellow human beings through individual and private acts of charity. But it is a higher morality to agree, that the collective conscience of the community shall impose upon the government that we maintain, the legal and the moral obligation to use the community's substance and intelligence to defend the dignity of every citizen against whatever threat from whatever source. This involves a commitment from all of us to help restore to our fellow citizens the human capability to develop to the fullness of their potential.

THE CONCEPT of liberty as human capability is clarified by an ancient Greek view. To Aristotle, for instance, every human person has an end, or destiny. This destiny of every man is to attain the fullness of physical, intellectual, and moral development. The realization of the full potential of human growth is the nature of mankind. And the nature of man is, in the Greek ideal, what man is when he is perfected. To be truly human one must attain excellence of the body, of the mind, and of the soul. This full development of man perfects him as an individual, and endows him with virtue as a citizen. This view of man—for how can we know liberty unless we begin with the nature of man? —requires that man be free. He must be free in the sense that he is free from violation by other men; he must be free, furthermore, in the sense that his capability is not destroyed by the afflictions of bodily infirmity, intellectual ignorance, and moral depravity. To the Greeks, the crippled, the ignorant,

and the morally depraved were not free. They were as unfree as the slave who belongs to a master, because they had not the full capability to develop into whole human beings, the capability to attain the fullness of the potential that is the destiny of human beings.

We extend this Greek view to suit our modern situation. We say that because the community is a human community, it has a role in the attainment of human development. The institutions that men devise, including their governmental institutions, are to be regarded not as hindrances to human fulfillment, but as necessary instruments for creating those situations and opportunities that restore, promote, or enhance human capability.

The implication of this ancient ideal for modern man is crucial. Men do not organize government in order to keep it aloof and indifferent to the quality of life. A government is set up by men precisely to create an active instrument to promote human welfare. The promotion of human welfare is not an empty slogan. It is a living purpose and an attainable goal. Government therefore becomes a reflection of our enlightened conscience, an additional resource of individuals and of the community, to help them attain their development, and if need be to emancipate them from despair and misfortune. In other words, government becomes the community's instrument of liberation and freedom, because government helps men to become free and human.

10. I think I have established, in the argument so far, that the maximum of liberty that is realizable by man in securing himself against government is only a small, though important, part of human liberty. Man's life transcends his relations with government, and the liberty he is entitled to in the other areas of human life is a larger, and equally important, component of liberty.

I have also shown that the bill of rights, properly understood, is hardly the embodiment

of that human capability and freedom that create human well-being. The entire bill of rights, prohibiting government from certain acts and guaranteeing certain rights to accused persons, cannot liberate a single destitute family from the stifling certainty of a bleak future, nor can all the political rights emancipate a single citizen from the burdens of socioeconomic deprivation.

Nevertheless, the enchantment of people schooled in the Lockeian and Jeffersonian doctrines sustains the strength of the bill of rights tradition. In particular, the idea that political dissent is the whole liberty is an even stronger tradition; by virtue of its romance, the literature of dissent almost never fails to excite sentiment and intellectual passion. Let us now therefore discuss the issue of political dissent.

The argument for political dissent is the simple and unarguable truth that every claim to absolute authority, every claim to political infallibility, is nonsense. Worse, it is an affront to human dignity. The argument for dissent as a right goes beyond the right of the freedom of thought. The right to think freely is futile unless it is accompanied by the right to express one's ideas. The right of free expression (and publication) is meaningless if it is limited to the freedom to express agreement. It must therefore extend to the right to express dissenting views. And the right to express dissent is of little worth if it is limited to dissent on trivial matters. Consequently the right of political dissent, indispensable to the concept of political liberty, must extend to the right of dissent on the most fundamental issues of society and politics. Without the comprehensive right of political dissent in this uncompromising sense, so the argument goes, there can be no true liberty.

LET US ANALYZE, and begin with the ground rules. For a start, political dissent as a right can be claimed only within the political community—that is, dissent as a right may be claimed only where there is government. Where there is no gov-

ernment there can be no law. Where there are no legal rights the only "rights" that are operational are the rights of brute force and cunning. Life in this condition is aptly described by Hobbes as "solitary, poor, nasty, brutish, and short." If, therefore, dissent is claimed as a right, it must be claimed within the framework of law.

Next, let us remember that the case for political dissent relates to the *expression of dissenting views.* The airing of diverse views, the argument holds, provides the community with alternatives to choose from. This then presupposes two conditions: that dissent is addressed to the mind, or at least to the judgment and opinion of the community; and that the community is in a condition that allows or facilitates intellectual choices or judgments. It follows that seditious or rebellious *acts beyond expression* cannot be recognized by law. Both common sense and the law establish valid distinctions between the expressing of views on the one hand, and acts on the other. While speech or expression (in their legal meanings) might be abused, the statement of views might in proper cases be justifiable on the defense that it is addressed to the judgment of the community. (This is not to say every justifiable expression is justified, in the same sense that an act that is voidable is not necessarily void). However, acts or overt actions are not appeals to intellectual judgment or reason, and therefore are not covered by the argument for dissent. Besides, if the acts be seditious or rebellious, how can the law protect acts intended to destroy it? There is also the second condition to consider, namely, that the community is in such circumstances as will enable it to choose, on the basis of judgment, among the alternative views expressed. This will be discussed later below.

From the foregoing, it is clear that it is not dissent as such, but dissent through free expression that might be recognized as a right. It is likewise clear that free expression is a qualified and not an unlimited right. It is not unlimited because, among other reasons, the law protects other rights.

Failure to understand the existence of other rights under law was a scandalous gap in our education in freedom before the New Society. The freedoms of expression and publication were wantonly exercised by the most abject illiterates in the philosophy of liberty. They ran roughshod over a right that is more ancient and precious than free expression and publication. This is the right of every person to privacy and dignity, ruthlessly violated by slander, libel, and calumny in the old mass media. The boast of the Philippine press before September 1972 that it was often rated by a foreign organization as among the freest presses in the world was necessarily tainted and voided by its persistent violation, often deliberately and cruelly, of a fundamental human right.

Another right that must be balanced with free expression is the right of government, any government, to protect and preserve itself. Indeed it is a well-established doctrine that it is not only the right, but also the duty of government to preserve and protect itself, since the faithful preservation of the system of law that guarantees rights is a duty of government.

WHAT HAPPENS if the right of free expression is exercised against the government? The answer to this question is well known. Under conditions where the community is relatively stable, one rule is that expression is not justified if it creates a "clear and present danger" which the State has the right to prevent. The other rule, allowing somewhat less room for free expression, is that it is not justified if it *tends* to create a danger to the State. In any case, these well-established rules make clear that dissent through expression cannot prevail against the law. If expression is claimed as a right to be exercised in the form of sedition or rebellion, it becomes an attack on the law and the government: the law that guarantees political rights, and the government that enforces those guarantees. Thus, seditious expression is an attack on the system of rights itself. As a result, and as might be expected, no government

in the world tolerates, much less protects, sedition and rebellion in the guise of free expression.

We cannot discuss the issue of dissent through free expression without considering the companion issue of answerability. In effect, the claim to complete and unlimited freedom of expression on political issues is no less than a claim to a guarantee of immunity from the consequences of freedom. This specific claim is sought to be justified on the ground that the greatest diversity of views is essential to a healthy and well-ordered society. However, the claim to a guarantee of immunity in fact amounts to a claim to a world in which all risk is removed. But if a world where every act of freedom is followed by the certainty of retribution—if such a world is incompatible with freedom, so is freedom itself incompatible with a world of no risk. The essence of freedom consists in acting freely, and in owning the consequences of one's acts. The free man acts, and acts freely, out of a certitude of conviction, not because there are no risks attendant to free action. In other words, the free man accepts that he is answerable for the consequences of his acts.

Freedom in this sense is inseparable from answerability. How can a man be called free, if, as a prerequisite to action, he asks that he not be answerable for what he says? The shelter of immunity is a strange haven for free men. Challenge, risk, peril even, are preconditions for the exercise of freedom. If men recoil from every challenge, retreat from every risk, and prefer safety to peril, then the only human freedom left is the freedom not to act, the freedom to keep silent. The timorous man waits for the removal of all risks before he acts. The free man accepts the real world, with or without restraint. He realizes that the existence of *some* restraint does not mean the loss of *all* freedom, and that the surest way to lose all of freedom is for free men to desist from acting in the face of risk. It does not require the removal of risk for a free man to act, for the human spirit asserts its freedom best in

response to risk and challenge.

I have repeatedly suggested that the grosser forms of the argument for political liberty, and for political dissent, are at best based on a false conception of man and society. Locke's preoccupation with securing man's liberty vis-a-vis government led him to the historic doctrine of the consent of the governed, but he could not perceive the glaring fact that the middle and lower classes of English society had no say in the government. Jefferson and his colleagues, obsessed with defending political rights, could proclaim equality of all men as a God-given right, while countenancing slavery as an institution of their new republic.

MAN CAN NEVER FULFILL himself wholly through political liberty. In any single day in our lives, the dominant concerns that occupy us as real men and women are those that deal with sustenance and shelter, matters of faith and religion, hobbies and leisure, the broadening of our minds, family affairs, our jobs, the tasks of spending and saving income, the state of our bodily health, and the vast range of nonpolitical relations with fellow human beings such as goodwill, reciprocation, cooperation and conflict, consensus and tension, revenge and hatred, and the gentle emotions of affection and love.

The person who spends and dedicates the whole of his life in a ceaseless, total, and unrelenting vigil against government applies the *whole* of himself to only a *part* of his human nature. He is the completely political creature, but somewhat other than man, because he neglects or rejects the nonpolitical concerns that make people become the human beings they are meant to be. In other words, the person who applies the whole of himself to only a part of human life must be, in Aristotle's words, either less or more than human—he must therefore be either a god or a beast.

I will summarize with the reminder that the freedom of expression is not unqualified. It is

subject to the metes and bounds prescribed by law. These metes and bounds, therefore, define the scope of free expression that the law protects and that the government enforces. In the real world of actual human societies, this scope at times narrows, at other times broadens. The governing assumptions here have been mentioned above: that expression is addressed to intellectual opinion, and that the community can make intellectual choices.

The scope of free expression broadens when a base of consensus prevails among the citizens on the larger and higher purposes of the community and on the system of law and government for attaining those purposes. In this condition the community is secure, and spirited as well as passionate debate can be contained by the common purposes which the citizens share.

The opposite case, where the consensus is weak, is much more complex. A weak consensus implies that there is only a fragile agreement among the citizens concerning the social order. There is a widespread indifference to public duties, but the politicalized and articulate sector of the citizenry energetically clamor for the defense of private rights. The government itself is weak. If this condition is not remedied, it will lead to serious consequences. The masses are passive, indifferent to the fate of the political leadership that is unable to uplift them. Criticism of the system and of the government by the articulate classes and by those who expect to profit from the fall of the leadership and the collapse of the system intensifies. Because the government is too weak to answer criticism, criticism escalates into the vocabulary of violence and sedition or rebellion. Minor administrative crises grow into serious economic and political crises. The combination of crises and free expression now makes the status quo untenable; worse, the indefensibility of the system is exposed and bared for all to see. In this condition the government becomes the only institution with a cohesive role, but its moral authority has weakened and is under chal-

lenge—this is the most dangerous moment in politics. The government still retains a coercive power, actual or potential, to be used constitutionally or otherwise. If this power is not used, a rival group or groups will attempt to seize it, perhaps in a rebellion. What usually happens is that the governmental leadership, or a sector of it, will take steps to preserve itself, and one of the first measures taken is invariably the restraint of expression on political matters. This restraint on expression is often a forced move, since the community in this case is already beyond an appeal to reason. If the government faction fails, or is unseated, the new leadership will likewise, at least for some time, impose restraint, and for the same reason. Finally, the success of either the government or the antigovernment faction creates new tasks. Either the old status quo will have to be reformed and set aright, or a new social order will have to be instituted. The restoration of free expression will then depend on the restoration of normality in the community.

11. The human societies for which Locke and Jefferson were the eloquent intellectual architects exist no more. Britain became a welfare state after World War II, replacing Locke's umpire state. The US Constitutional system is still largely Jeffersonian, but in practice American society and politics today have come around to a recognition of the legitimacy of government action in social security and minority welfare.

The preamble of the United Nations Charter, mirroring the higher aspirations of the largest association of human beings in history, states the human determination to "promote social progress and better standards of life in larger freedom." Why this phraseology? Why "in larger freedom."? Is not freedom itself, unqualified and essential, enough? The phrase "in larger freedom" suggests a conception of freedom similar to the four freedoms concept of the US President Franklin D. Roosevelt: freedom of expression, freedom of worship, freedom from want, and freedom from fear. This is an enlarged vision

of the fundamental needs of mankind, expressing a broader and wiser understanding of human beings and of the purposes of government. The phrase "in larger freedom" therefore transcends the old, limited conception of freedom as meaning only the freedom of citizens vis-a-vis the government.

The history of the struggle for political liberty has been long and expensive, both in wealth and in the lives of courageous men and women who died for their convictions. Nevertheless, the struggle for the liberation of mankind from want and hunger, deprivation and injustice, has been a longer and a more ancient struggle, in the course of which many times more human lives have been destroyed.

THE NEW SOCIETY is both an inevitable evolution and an authentic revolution. It is evolutionary because it associates us as a national community with that historic process that continuously broadens and intensifies the sensitivity of mankind to the wholeness of human nature. It commits us to a shift from an intellectual view that regards man as a political creature, to a view of man in which we may discern our wholeness as human beings. It is inevitable, because pre-martial-law Filipino society had irredeemably lost its powers of self-renewal, bestowing all its rewards to cunning and advantage and connection and stifling benevolence, goodwill, and compassion.

Our most recent chance for national self-renewal presented itself in the mid-1950s, reflected in the late President Magsaysay's homily that "those who have less in life should have more in law." This was only an echo of the sociopolitical proposition of Leo XIII (1878-1903) that "when there is a question of defending the rights of individuals, the poor and helpless have a claim to especial consideration from the State." In 1971 President Marcos wrote: "There can never be a perfect society. But a society which permits human beings to fulfill themselves in whatever

manner that benefits their dignity and freedom as individuals is worth our single-minded dedication." By 1972, however, law and State in the Philippines had themselves been eroded by the dehumanization of liberty and freedom, serving only to protect rights against the government and against the conscience of the community. A revolution was necessary in order to restore to the community the capability to renew itself.

The New Society is an authentic revolution because its political perspectives categorically reject the established convictions that upheld the premartial-law Filipino society. It repudiates the notion that men and women organize government as a hostile institution against which it is their highest concern to protect themselves. It postulates, on the other hand, that government is instituted precisely to become the common instrument of the community to uplift its members. It rejects the fear, cultivated by the politics of the old order, that democracy is doomed to impotence and fractious mischief, flawed by an inherent incapacity to decide and act efficaciously. It holds, on the other hand, that we as a people are not destitute of talent and deprived of hope, provided that we apply to both our public and private roles all of the good that is in us as a nation.

The revolutionary character of the New Society is not embodied in its condemnation of graft and corruption, purposeless politics, and oligarchic domination. Any leadership that could have eradicated these weaknesses in our old society would have been welcomed by the people, but any gains to the nation would have been temporary. A change in leadership without a change in intellectual vision would ultimately and surely return us to that condition of *incivisme,* social conflict, and governmental impotence that were the hallmarks of the old status quo—not because Filipinos are incapable of self-government, but because the intellectual underpinnings of the old society placed the highest value on the pursuit of private liberty

without civic obligation and human compassion.

The New Society is revolutionary because it rejects those intellectual concepts that led us to rationalize and sustain corruption, opportunism, and human inequality. The New Society vision of man and politics, when logically developed, asserts that that tradition of liberty and freedom in which we all have been schooled, if logically elaborated, is inadequate for the development of humanity and civic life under modern conditions. The revolution is in the departure from the intellectual vision of our old political education.

The New Society exposes these concepts—liberty without the grace of human equality, freedom without the discipline of answerability—as self-defeating delusions. They are delusive because they do not reflect the reality of human and social needs. They are self-defeating because they unerringly create the social forces that will ultimately reject them. Political liberty and freedom that create the rights which promote affluence for the few, and sustain deprivation for the many, will necessarily dissolve the bonds between the rich and the poor, destroy the cohesive ties which make the different classes into a community. As soon as these bonds begin to weaken we begin to lose our community, and it becomes impossible to develop that collective will and capability that alone can promote the common well-being that is the reason for community life.

THIS PAPER is all too brief; it does not discuss many related issues. It was written in some haste because of my feeling that an overview is needed as early as possible, in order that we can have a sense of President Marcos' intellectual vision of our national future. I have hardly mentioned the many successful programs of the New Society, of the favorable impression that they have wrought in the consciousness of most of us. I discuss the intellectual vision of the President on liberty, and its implications on governmental

authority, because it is through this vision that the New Society first engages the sources of our allegiance and commitment.

It is certainly this perspective of the President that has tempered the conventional harshness, severity, and austerity of martial law. If, as the President realizes, "martial law necessarily creates a command society," he equally recognizes that "a new society cannot emerge out of sheer command alone." In other words, if the New Society is for "human beings to fulfill themselves . . . in dignity and freedom," the promotion of those conditions that minimize socioeconomic deprivation and maximize human capability is to be based, sooner or later, on citizen options. Obedience, in the President's view, can be commanded, but allegiance is an act of choice.

I trust that this paper accurately reflects the New Society's perspectives on human liberty and governmental authority. I believe that the discussion is a fair presentation of the doctrines of Locke and Jefferson on political liberty and government. It is unwise to make decisions on allegiance and commitment without a knowledge of that vision to which we commit ourselves. It is unworthy of the modern intellectual to retain his allegiance to a vision that was appropriate to the societies of the seventeenth and eighteenth centuries.

The challenge for the Filipino intellectual today, therefore, is to understand and appreciate the New Society through its vision, so that he may share in the task of keeping it true, and faithful, to that vision. □

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